UNITED STATES OF AMERICA BEFORE THE NATIONAL LABOR RELATIONS BOARD

APPOLLO SYSTEMS, INC.

Employer-Petitioner

and

Case 18-UC-423

INTERNATIONAL BROTHERHOOD OF ELECTRICAL WORKERS, LOCAL 292

Union

ORDER

The Union's Request for Review of the Regional Director's Decision and Order raises substantial issues. Having carefully considered the matter, we have determined to remand this proceeding to the Regional Director for further findings.

The Employer-Petitioner (Employer) and Union are signatories to a Statewide Limited Energy labor contract, which runs from December 19, 2007 through September 30, 2010. The contract covers employees in the Employer's commercial division.

In December 2007, the Employer ceased using the name "Focis, Inc. d/b/a Appollo Systems," for its commercial division. Both the residential and commercial divisions became known as Appollo Systems, Inc. Approximately 18-months after the Employer changed its name for its commercial division, the Union filed a grievance claiming that it had no previous knowledge that Appollo Systems was actually operating as one company. In light of the name change, the Union requested that all employees in the residential division be included in the existing unit. The Employer denied this request. The Union notified the Employer that it would proceed with the grievance. Thereafter, the Employer filed this unit clarification petition seeking to affirmatively exclude the residential employees from the existing bargaining unit of installers and technicians employed in its commercial division. The Regional Director clarified the

¹ Effective midnight December 28, 2007, Members Liebman, Schaumber, Kirsanow, and Walsh delegated to Members Liebman, Schaumber, and Kirsanow, as a three-member group, all of the Board's powers in anticipation of the expiration of the terms of Members Kirsanow and Walsh on December 31, 2007. Pursuant to this delegation, Chairman Liebman and Member Schaumber constitute a quorum of the three-member group. As a quorum, they have the authority to issue decisions and orders in unfair labor practice and representation cases. See Sec. 3(b) of the Act. See *Teamsters Local 523 v. NLRB*, 590 F.3d 849 (10th Cir. 2009); *Narricot Industries, L.P. v. NLRB*, 587 F.3d 654 (4th Cir. 2009); *Snell Island SNF LLC v. NLRB*, 568 F.3d 410 (2d Cir. 2009), petition for cert. filed 78 U.S.L.W. 3130 (U.S. Sept. 11, 2009) (No. 09-328); *New Process Steel v. NLRB*, 564 F.3d 840 (7th Cir. 2009), cert. granted 130 S.Ct. 488 (2009); *Northeastern Land Services v. NLRB*, 560 F.3d 36 (1st Cir. 2009), petition for cert. filed 78 U.S.L.W. 3098 (U.S. Aug. 18, 2009) (No. 09-213). But see *Laurel Baye Healthcare of Lake Lanier, Inc v. NLRB*, 564 F.3d 469 (D.C. Cir. 2009), petition for cert. filed 78 U.S.L.W. 3185 (U.S. Sept. 29, 2009) (No. 09-377).

existing unit to exclude the Employer's residential employees on the basis that they have been historically excluded from the unit.

The Union claims, among other things, that the parties are bound by a Section 8(f) contract, and that Section 8(f) representational issues are exempt from the Board's unit clarification process. The Employer asserts that the parties have a contract governed by Section 9(a), not Section 8(f). For purposes of his decision, the Regional Director assumed that the Union and the Employer are bound by a Section 8(f) contract. The Regional Director then found, contrary to the Union, that Section 8(f) representational issues are not exempt from the Board's unit clarification process. In applying unit clarification principles to the facts of this case, the Regional Director found that the residential employees at issue have been historically excluded from the existing bargaining unit, and clarified the contract to exclude them.

Before considering the legal issue of whether unit clarification principles are applicable here, we believe it would be more expeditious to remand this case to the Regional Director for a determination of whether the contract between the parties was made pursuant to Section 8(f) or Section 9(a). Thereafter, we can consider the issues necessary to deciding the case. Accordingly, we remand this case to the Regional Director for a determination of the status of the parties' contract, including, if necessary, holding a hearing.

WILMA B. LIEBMAN, CHAIRMAN

PETER C. SCHAUMBER, MEMBER

Dated, Washington, D.C., March 3, 2010.